



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

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Carl Garvey  
General Counsel  
Revitalizing Auto Communities Environmental Response (RACER) Trust  
1505 Woodward Avenue, Suite 200  
Detroit, MI 48226  
cgarvey@racertrust.org

VIA ELECTRONIC MAIL

Dear Mr. Garvey,

As discussed, I am writing to confirm the United States Environmental Protection Agency's ("EPA's") anticipated enforcement approach with respect to the Ley Creek Deferred Media ("LCDM") portion of the General Motors – Inland Fischer Guide Operable Unit. EPA intends to follow its standard enforcement practices in accordance with applicable EPA policies, as set forth below, in its efforts to facilitate the implementation of a remedial action at LCDM under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA," also known as "Superfund"). We are in the early stages of our enforcement efforts with respect to the remedial action at LCDM, and circumstances may arise that warrant a deviation from EPA's typical practices. However, the below information describes our enforcement plans based on the information currently available to us.

It is EPA's longstanding policy to pursue "enforcement first" with respect to the remediation of Superfund sites. This means that EPA will, in the first instance, seek to use its enforcement authorities under CERCLA to have potentially responsible parties ("PRPs") perform or fund remedial activities at LCDM before expending Superfund monies. *See* "Enforcement First for Remedial Action at Superfund Sites" (Sept. 20, 2002), *available at* <https://www.epa.gov/sites/production/files/documents/enffirst-mem.pdf>. EPA begins the Superfund enforcement process with a PRP search, which may include a review of site documents, the collection of historical records, the transmission of CERCLA Section 104(e) information request letters, and the performance of interviews, among other activities, to gather evidence of potential liability and to identify the universe of PRPs. *See* "PRP Search Manual," OECA (September 2017), *available at* [https://www.epa.gov/sites/production/files/2017-10/documents/prp-search-man-cmp-17\\_0.pdf](https://www.epa.gov/sites/production/files/2017-10/documents/prp-search-man-cmp-17_0.pdf). EPA's PRP search for LCDM is ongoing, and EPA is investigating several parties that it believes may potentially be legally responsible for performing or funding the remediation of LCDM, in addition to RACER.

For the vast majority of remedial actions, once PRPs have been identified for a site, EPA will send either special or general notice letters in order to inform the PRPs of their potential liability for future response costs, as well as to begin or continue the process of information exchange and

to initiate negotiation of a resolution of that liability. Special notice letters are issued under Section 122(e) of CERCLA and trigger a statutory moratorium on EPA performing response work or taking any enforcement action to compel such work, during which time negotiations are intended to occur. *See* “Interim Guidance on Notice Letters, Negotiations, and Information Exchange,” OSWER (October 19, 1987), *available at* <https://www.epa.gov/sites/production/files/documents/tran-notlet-mem.pdf>. EPA anticipates sending special notices letters to identified LCDM PRPs in the coming months.

EPA is statutorily obligated to memorialize any agreement with PRPs to perform a remedial action in a judicial consent decree. Such settlements can reduce the possibility of litigation and attendant transaction costs. *See* “Negotiation and Enforcement Strategies to Achieve Timely Settlement and Implementation of Remedial Design/Remedial Action at Superfund Sites,” OECA (June 17, 1999), *available at* <https://www.epa.gov/sites/production/files/2013-10/documents/neg-enfst-mem.pdf>. EPA plans to provide the PRPs for LCDM with such a draft consent decree in an effort to negotiate the implementation of the remedy by the PRPs. If there are PRPs that are not willing to agree to a timely settlement to perform the required work, EPA may seek to compel their participation in the performance of the work through a unilateral administrative order. *See* “Guidance on CERCLA Section 106(a) Unilateral Administrative Orders for Remedial Designs and Remedial Actions,” OSWER (March 7, 1990), *available at* <https://www.epa.gov/sites/production/files/documents/cerc106-uao-rpt.pdf>.

At sites with multiple PRPs, the costs of the remedial action typically must be allocated amongst the PRPs. In many of these instances, the harm is indivisible and the liability among the PRPs is joint and several as to EPA. It is for this reason that EPA is not typically involved in this allocation process among the PRPs; rather, PRPs generally coalesce to allocate liability amongst themselves based on their respective contribution claims, or allocations are imposed upon them by courts in private contribution actions brought among the PRPs. *See* “Developing Allocations Among Potentially Responsible Parties for the Costs of Superfund Site Cleanups,” OSRE (October 1994), *available at* <https://www.epa.gov/sites/production/files/2020-02/documents/allocation-prps-1994.pdf>. In unusual cases—for example, where PRPs are unable to come to an agreement on the appropriate allocation of responsibility—EPA may choose to perform or facilitate an allocation. However, such circumstances are rare, and EPA does not anticipate that it will need to be involved in the allocation of remedial costs for the LCDM remedy.

Please let me know if you have any questions regarding the above information. I can be reached by email at [Ludmer.Margo@epa.gov](mailto:Ludmer.Margo@epa.gov) or by phone at (212) 637-3187.

Thank you,



Margo Ludmer  
Assistant Regional Counsel  
New York / Caribbean Superfund Branch